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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TERRI HAYFORD, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

MAGELLAN HEALTH, INC.,

Defendant.

No.: 15-CV-02643-PHX-JJT

**PLAINTIFF'S FIRST AMENDED
COLLECTIVE ACTION COMPLAINT**

(JURY TRIAL REQUESTED)

1 Plaintiff, Terri Hayford, individually and on behalf of all other persons similarly
2 situated, known and unknown, through her attorneys, complains against Defendant
3 Magellan Health, Inc. (“Defendant”), as follows:

4
5 **NATURE OF PLAINTIFF’S CLAIMS**

6 1. This lawsuit arises under the Fair Labor Standards Act, 29 U.S.C. § 201
7 *et seq.* (“FLSA”), for Defendant’s failure to pay Plaintiff and other similarly situated
8 persons all overtime pay for all time worked in excess of forty (40) hours per week.

9 2. Defendant employs the telephone-based workers who are the putative class
10 members in this lawsuit.

11 3. Defendant knowingly required and/or permitted Plaintiff, who worked as
12 a telephone-dedicated employee in the position of Customer Service Associate and
13 other similarly situated telephone-dedicated employees to perform unpaid work before
14 and after the start and end times of their shifts, including but not limited to booting up
15 computers, initializing several software programs, reading company issued emails and
16 instructions, and completing customer service calls.

17 4. In addition, Defendant was aware that Plaintiff and those similarly situated
18 to her also performed work for Defendant on their break periods, including meal breaks, for
19 which they were not paid. The work that Plaintiff and similarly situated employees
20 performed during break periods includes, but is not limited to, completing customer
21 orders, finishing customer service calls, logging back into the phone system, re-booting
22 their computers and initializing software programs.

23 5. The amount of uncompensated time Plaintiff and those similarly situated to
24 her spend or have spent on these required and unpaid work activities averages
25 approximately fifteen to twenty minutes per day per person.
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1 6. Defendant's conduct violates the FLSA, which requires non-exempt
2 employees to be compensated for their overtime work at a rate of one and one-half times
3 their regular rate of pay. *See* 29 U.S.C. § 207(a).

4 7. Plaintiff brings her FLSA overtime claims as a collective action pursuant to 29
5 U.S.C. § 216(b) on behalf of telephone-dedicated employees who worked for Defendant
6 throughout the country at call centers owned by Magellan Health, Inc. ("Magellan").
7

8 **JURISDICTION AND VENUE**

9 8. This Court has original jurisdiction over Plaintiff's FLSA claims in this
10 action under 29 U.S.C. § 1331 and 29 U.S.C. § 216(b).

11 9. Venue is proper in this Court as the illegal conduct alleged herein occurred
12 in this district.
13

14 **THE PARTIES**

15 10. Plaintiff Terri Hayford is an individual who Defendant employed from
16 approximately June 2014 to approximately November 2014 as an hourly, non-exempt
17 Customer Service Associate who was placed to work in a call center operated by Magellan
18 located at 4802 E. Washington Road in Tempe, Arizona. Plaintiff Hayford resides in and
19 is domiciled within this judicial district.
20

21 11. Magellan offers contact call center and business process outsourcing services
22 to small to medium sized enterprises. Magellan operates a telephone call center on
23 Washington Road in Tempe, Arizona and, upon information and belief, elsewhere, where
24 telephone-dedicated hourly employees handle phone calls regarding various medical
25 authorization and insurance inquiries, among other things. Magellan directly employs
26 Customer Service Associates at its call centers.

27 12. Defendant employed Plaintiff and other similarly situated persons as
28 "employees," as that term is defined by Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

1 13. At all material times, Defendant has been an enterprise in commerce or in
2 the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because
3 it has had employees engaged in commerce. 29 U.S.C. § 203(s)(1).

4 14. Furthermore, Defendant has had, and continues to have, an annual gross
5 business volume in excess of \$500,000.

6 15. At all relevant times, Defendant was an “employer” of Plaintiff and other
7 similarly situated persons, as that term is defined by Section 203(d) of the FLSA, 29 U.S.C.
8 § 203(d).

9 16. At all material times, Plaintiff and FLSA Class Members were individual
10 employees who engaged in commerce or in the production of goods for commerce as
11 required by 29 USC § 206-207.

12 17. Further, at all material times, Defendant has operated as a “single enterprise”
13 within the meaning of 3(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1). That is, Defendant
14 performs related activities through unified operation and common control for a common
15 business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973); *Chao*
16 *v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914–15 (9th Cir. 2003).

18 **FACTUAL ALLEGATIONS**

19 ***A. Defendant’s Practice of Requiring and/or Permitting Telephone-Based*** 20 ***Hourly Employees to Work Before the Start of Their Scheduled Shift Time***

21 18. Magellan operates and has operated “call centers” in Arizona and across the
22 nation where telephone-dedicated employees similar to Plaintiff handle phone calls
23 regarding various call center services including medical authorization and insurance
24 inquiries offered by Magellan to its customers.
25

26 19. Prior to starting work on the call center floor, Plaintiff and other similarly
27
28

1 situated telephone-based employees were and are interviewed by employees and managers
2 of Magellan.

3 20. Magellan had the power to hire and fire Plaintiff and other persons similarly
4 situated.
5

6 21. At the Magellan call center where Plaintiff Hayford worked, Magellan had
7 managers on the floor of the call center during the workday, managing the work activities
8 of the Plaintiff and other similarly situated persons.
9

10 22. Defendant does not allow telephone-based employees to use its phones and
11 computers for any personal use. Additionally, Defendant generally prohibits and does not
12 allow telephone-based employees to use their own personal cell phones on the call center
13 floor. Under Defendant's policies and practices, telephone-based employees are required
14 to store their personal cell phones during the work day and can generally only use them on
15 breaks and off the call center floor.
16
17

18 23. At the Magellan call center where Plaintiff worked, Magellan's managers on
19 the call center floor could and did regularly see with their own eyes that Plaintiff and
20 similarly situated telephone-based employees arrived at their work stations before the start
21 of their scheduled shift time, logged into Magellan's computers, and began working on
22 their computers prior to the start of their scheduled shift time.
23

24 24. Despite seeing and knowing that Plaintiff and similarly situated telephone-
25 based employees performed work at their work stations prior to their scheduled shift time
26 start, Defendant and its managers on the floor of the call center did not make any effort to
27
28

1 stop or otherwise disallow this pre-shift work and instead allowed and permitted it to
2 happen.

3
4 25. Defendant possesses, controls and/or has access to information and
5 electronic data that shows the times Plaintiff and similarly situated telephone-based
6 employees logged into their computers each day and the time they logged into their
7 telephone systems.
8

9 26. By possessing, controlling and/or accessing this information, Defendant
10 knew that Plaintiff and similarly situated telephone-based employees worked prior to the
11 start of their scheduled shift time.
12

13 27. Despite having this information and knowing that Plaintiff and similarly
14 situated telephone-based employees logged into their computers, initialized necessary
15 software programs, and read company issued emails and instructions prior to the start of
16 their scheduled shift time, Defendant did not make any effort to stop or otherwise disallow
17 this pre-shift work and instead allowed and permitted it to happen.
18

19 28. Defendant knowingly required and/or permitted Plaintiff and those similarly
20 situated to her to perform unpaid work before and after the start and end times of their
21 shifts, including but not limited to booting up computers, initializing several software
22 programs, and reading company issued emails and instructions prior to the start of their
23 scheduled shift time, and completing customer service calls, closing down the software
24 programs, and logging off the system after the end of their scheduled shift times.
25
26

27 29. In addition, by having managers on the call center floor and having access to
28

1 the electronic data, among other things, Defendant was aware that Plaintiff and those
2 similarly situated to her also performed work for Defendant on their break periods, for which
3 they were not paid. The work that Plaintiff and similarly situated employees performed
4 during break periods includes, but is not limited to, completing customer orders,
5 finishing customer service calls, logging back into the phone system, re-booting their
6 computers and initializing software programs.
7

8
9 30. The amount of uncompensated time Plaintiff and those similarly situated to
10 her spend or have spent on these required and unpaid work activities averages
11 approximately fifteen to twenty minutes per day per person.
12

13 31. Defendant monitored and directed the work activities of Plaintiff and other
14 similarly situated persons, including the unpaid work at issue.
15

16 ***B. Defendant Knew of and Assented to the Pre-Shift Work***

17 32. Defendant's policy and practice permits and/or requires telephone-based
18 employees to be logged into their phones by the employee's scheduled start time.
19

20 33. In order to be logged into Magellan's telephone systems, Defendant required
21 and/or permitted Plaintiff and similarly situated telephone-based employees to arrive at
22 their work station prior to their scheduled shift time and boot up computers, initialize
23 several software programs, and read company emails and instructions.
24

25 34. Defendant's policy and practice disciplines telephone-based employees if
26 they are not logged into their phones and ready to handle calls by the start of their scheduled
27 shift time.
28

1 35. This policy and practice of Defendant results in telephone-based employees,
2 including the Plaintiff, to boot up their computers, initialize several software programs
3 and/or read company emails and instructions prior to their start of their scheduled shift
4 time.
5

6 36. As set forth herein, via its policies and practices and through its own
7 telephone and computer systems, Defendant knew and was aware that the telephone-based
8 employees performed work prior to the start of their scheduled shift.
9

10 37. Defendant did not instruct Plaintiff and similarly situated telephone-based
11 employees to not log into their computers or telephone, or to not read company emails prior
12 to the start of their scheduled shift time. Rather, Defendant required, permitted and/or
13 allowed Plaintiff and the putative class members to work prior to their scheduled shift time.
14

15 38. By knowing of, permitting and/or requiring Plaintiff and similarly situated
16 telephone-based employees to log into their computers, initialize their various software
17 programs and/or read company email and instructions prior to the start of their scheduled
18 shift time, Defendant assented to them performing this work.
19
20

21 ***C. Defendant's Failure to Pay Overtime Wages to Its Telephone-Based***
22 ***Hourly Employees***

23 39. Defendant determined the rate of pay for Plaintiff other similarly situated
24 persons.
25

26 40. Defendant's managers reviewed and approved Plaintiff and other similarly
27 situated persons' time records prior to receiving their paychecks.
28

1 41. Defendant supervised and controlled the work schedule of Plaintiff and other
2 similarly situated persons.

3 42. Defendant issued paychecks to Plaintiff other similarly situated persons, and
4 was involved in determining the actual amount of compensation paid by the paycheck.

5 43. Plaintiff and those employees similarly situated are individuals who were, or
6 are, employed by Defendant in customer service, sales, and similar positions at
7 Magellan's call centers who were not paid for some or all of their work activities prior to
8 the beginning of their shifts, during meal and rest breaks, or after the end of their shifts.

9 44. Plaintiff and the other employees are similarly situated to one another
10 because their duties consisted primarily of providing services related to handling phone calls
11 regarding various call center services including medical authorization and insurance
12 inquiries offered by Magellan to its customers while working in Magellan's call centers.
13 Plaintiff and others similarly situated all shared similar policies, job titles, job descriptions,
14 training, job duties and compensation, among other things.

15 45. Plaintiff and the other employees are also similar because Defendant did not
16 pay them for all time they actually worked. Defendant knowingly required Plaintiff and the
17 similarly situated individuals to perform unpaid work before and after their scheduled
18 shifts, including but not limited to booting-up computers, initializing several software
19 programs, reading company emails and instructions, and completing customer service
20 calls. Additionally, Defendant was aware that Plaintiff and those similarly situated to her
21 also performed work for Defendant on their break periods, for which they were not paid.

1 46. The net effect of Defendant's policies and practices, instituted and approved
2 by company managers, is that Defendant willfully failed to pay regular and overtime
3 compensation to Plaintiff and others similarly situated, and willfully failed to keep accurate
4 time records to save payroll costs. Defendant thus enjoyed ill-gained profits at the expense
5 of its hourly employees.
6

7 47. Plaintiff and others similarly situated at times work or worked in excess of
8 forty hours per week for Defendant in a given workweek.
9

10 48. Defendant's policy and practice of requiring and/or permitting its employees,
11 including Plaintiff and other non-exempt, hourly employees, to perform work without pay
12 for such work performed, violates Section 6 of the FLSA, 29 U.S.C. § 206.
13

14 49. Defendant's policy and practice of requiring its employees to perform work
15 without pay in many instances has caused and continues to cause Plaintiff and certain other
16 similarly situated hourly employees to work in excess of forty hours per week, without
17 being properly compensated at a wage of 1.5 times their respective hourly rate for such
18 work performed, as required by Section 7 of the FLSA, 29 U.S.C. § 207.
19

20 50. Defendant's failure to compensate its non-exempt, hourly call center
21 employees with the full amount of the applicable regular wage or overtime wage has caused
22 Plaintiff and other similarly situated non-exempt call center employees to suffer harm.
23

24 51. Defendant's non-exempt, call center hourly employees are entitled to
25 compensation for all time they worked without pay in any given workweek.
26

27 **COLLECTIVE ACTION ALLEGATIONS**
28

1 52. Plaintiff brings Count I of this Complaint as a collective action on behalf of
2 herself and all other current and former hourly employees of Defendant who Defendant
3 required to perform the work described herein without pay at any time during the three
4 years prior to the commencement of the action to present at call centers owned by
5 Magellan.
6

7 53. Plaintiff has actual knowledge that FLSA Class Members have also been
8 denied overtime pay for hours worked over forty hours per workweek. That is, Plaintiff
9 worked with other telephone dedicated employees who worked at the Magellan call center.
10 As such, she has first-hand personal knowledge that the same pay violations occurred to
11 other class members. Furthermore, other telephone dedicated employees at Magellan call
12 centers have shared with her similar pay violation experiences as those described in this
13 complaint.
14

15 54. Other employees similarly situated to Plaintiff work or have worked at
16 Magellan call centers, but were not paid overtime at the rate of one and one-half their
17 regular rate when those hours exceeded forty hours per workweek.
18

19 55. Although Defendant permitted and/or required the FLSA Class Members to
20 work in excess of forty hours per workweek, Defendant has denied them full compensation
21 for their hours worked over forty. Defendant has also denied them full compensation at
22 the federally mandated minimum wage rate.
23

24 56. FLSA Class Members perform or have performed the same or similar work
25 as Plaintiff.
26
27
28

1 57. FLSA Class Members regularly work or have worked in excess of forty hours
2 during a workweek.

3 58. FLSA Class Members are not exempt from receiving overtime pay at the
4 federally mandated wage rate under the FLSA.

5 59. As such, FLSA Class Members are similar to Plaintiff in terms of job duties,
6 pay structure, and the denial of overtime wages.

7 60. Defendant's failure to pay the overtime compensation wage rate required by
8 the FLSA results from generally applicable policies or practices, and does not depend on
9 the personal circumstances of the FLSA Class Members.

10 61. The experiences of Plaintiff, with respect to her pay, are typical of the
11 experiences of the FLSA Class Members.

12 62. The specific job titles or precise job responsibilities of each FLSA Class
13 Member do not prevent collective treatment.

14 63. All FLSA Class Members, irrespective of their particular job requirements,
15 are entitled to overtime compensation for hours worked in excess of forty during a
16 workweek.

17 64. Although the exact amount of damages may vary among FLSA Class
18 Members, the damages for the FLSA Class Members can be easily calculated by a simple
19 formula. The claims of all FLSA Class Members arise from a common nucleus of facts.
20 Liability is based on a systematic course of wrongful conduct by Defendant that caused
21 harm to all FLSA Class Members.

1 65. As such, Plaintiff brings her FLSA overtime as a collective action on behalf
2 of the following class, and Plaintiff's Counsel seek to send notice of this lawsuit to the
3 following described persons:
4

5 All persons who worked for Defendant as telephone dedicated
6 employees, however titled, who were compensated, in part or
7 in full, on an hourly basis at Magellan call centers at any time
8 between December 28, 2012 and the present who did not
9 receive the full amount of overtime wages earned and owed to
10 them.

11 66. There are questions of law or fact common to the employees described in
12 paragraph 65.

13 67. Plaintiff is similarly situated to the employees described in paragraph 65, as
14 Plaintiff's claims are typical of the claims of those persons.

15 68. Plaintiff's claims or defenses are typical of the claims or defenses of the
16 persons described in paragraph 65.

17 69. This is not a collusive or friendly action. Plaintiff has retained counsel
18 experienced in complex employment litigation, and Plaintiff and her counsel will fairly and
19 adequately protect the interests of the persons described in paragraph 65.
20

21 70. A collective action is the most appropriate method for the fair and efficient
22 resolution of the matters alleged in Count I.
23

24 71. At all relevant times, Defendant employed Plaintiff and the persons described
25 in paragraph 65.

26 72. At all relevant times, Defendant paid Plaintiff and the persons described in
27 paragraph 65 to work.
28

1 paid for all time worked in excess of 40 hours in a week during the applicable statutory
2 time period, in violation of the maximum hours provisions of the FLSA, 29 U.S.C. § 207.

3
4 81. At all times relevant hereto, Defendant's failure to pay Plaintiff and the
5 members of the class described in paragraph 65 premium pay for all time worked over 40
6 hours in a week was willful in that, among other things:

- 7
8 a. Defendant knew that the FLSA required it to pay time and one-half
9 for all time worked over 40 hours in a week;
10 b. Defendant failed to maintain true and accurate time records; and
11 c. Defendant encouraged Plaintiff and other similarly situated
12 employees to not record all time worked.

13 82. As a direct and proximate result thereof, Plaintiff and the members of the
14 class described in paragraph 65 are due unpaid back wages and liquidated damages,
15 pursuant to 29 U.S.C. § 216.
16

17 **DAMAGES SOUGHT**

18
19 83. Plaintiff and the FLSA Class Members are entitled to recover compensation
20 for the hours they worked for which they were not paid at the federally mandated overtime
21 wage rate.

22 84. Plaintiff and the FLSA Class Members are also entitled to an amount equal
23 to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).
24

25 85. Plaintiff and FLSA Class Members are entitled to recover their attorneys'
26 fees and costs as required by the FLSA. 29 U.S.C. § 216(b).
27

28 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,

1 by and through her attorneys, demands judgment against Defendant and in favor of Plaintiff
2 and all others similarly situated, for a sum that will properly, adequately and completely
3 compensate them for the nature, extent and duration of their damages, the costs of this
4 action and as follows:
5

6 A. Conditionally certify the class described in paragraph 65, and grant Plaintiff's
7 counsel leave to send notice of this lawsuit to the members of the class and allow
8 them the opportunity to opt-in as party plaintiffs pursuant to Section 16 of the FLSA,
9 29 U.S.C. § 216;

10 B. Declare and find that the Defendant committed one or more of the following acts:

11 i. Violated provisions of the FLSA for Plaintiff and all persons who opt-in as
12 party plaintiffs; and

13 ii. Willfully violated provisions of the FLSA for Plaintiff and all persons who
14 opt-in as party plaintiffs.

15 C. Award compensatory damages, including all wages and overtime pay owed, in
16 an amount according to proof;

17 D. Award liquidated damages on all wages and overtime compensation due to Plaintiff
18 and all persons who opt-in as party plaintiffs;

19 E. Award all costs and reasonable attorneys' fees incurred prosecuting this claim;
20

21 F. Grant leave to amend to add claims under applicable state and federal laws to
22 conform with the proofs at trial;

23 G. Grant leave to add additional plaintiffs by motion or any other method approved by
24 the Court to conform with the proofs at trial; and

25 H. Grant such further relief as the Court deems just and equitable.
26

27 DATED this 20th day of April 2016
28

LAW OFFICE OF JAMES X. BORMES, P.C.

s/ James X. Bormes

(pro hac vice admission pending)

James X. Bormes

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2016, I filed the attached document via the CM/ECF system which will send notification of such filing to counsel for Defendant, via the email addresses listed below:

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/s/ Catherine P. Sons, attorney